UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Electricity Market Design and Structure) Docket No. RM01-12-000
EX01-3-000

COMMENTS OF COMMISSIONER DAVID A. SVANDA
MICHIGAN PUBLIC SERVICE COMMISSION

Washington, D.C.
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Good morning. Mr. Chairman and members of the Commission, as you know, my name is Dave Svanda of the Michigan Public Service Commission (MPSC). I am also First Vice President of the National Association of Regulatory Utility Commissioners (NARUC). I would like to thank the Federal Energy Regulatory Commission (FERC) for convening this session on the first day of the NARUC Winter Meetings and giving us this opportunity to present our views on "whether all wholesale and retail transmission services should be under the same rates, terms and conditions."

I believe that many of my state colleagues would agree that for regional wholesale and retail electricity markets to flourish the answer has to be largely, "yes." For those interested in markets, seamlessness means that the rules of the road should be similar, if not the same, for all participants. Although there may be instances where there are legitimate reasons for differences between wholesale and retail rates, terms, and conditions, market participants need consistency in order to function. Our bifurcated regulatory system creates mutually beneficial opportunities for constructive change but can also magnify differences, creating market-stifling roadblocks. In light of this possibility, does it make sense to maintain the dual jurisdiction transmission model? I believe, as I will explain, the answer is "yes." We must, however, work together to eliminate

barriers to market development while preserving the positive aspects of the federal/state regulatory system.

In October of last year, I had the privilege to address this Commission on the need for a federal/state partnership in the Midwest. I, for one, am gratified that the Commission continues to seek the advice of the state regulators, as exemplified by this conference. Also, on behalf of many of my colleagues in the heartland, I would like to take this opportunity to thank the Commission for your December, 2001 orders which provided welcome clarity to the RTO/ISO confusion we were facing in the Midwest. Your orders are a giant step toward solving the scope and configuration problems threatening wholesale electric market development in our region. Well done! Now back to the subject at hand.

Almost two years ago, Michigan's legislature enacted the "Customer Choice and Reliability Act" to, among other things, ". . . ensure that all retail customers in this state . . . have a choice of electric suppliers." This statute required the Michigan Public Service Commission to establish rates, terms, and conditions of service to allow customers the opportunity to select alternative electric suppliers by January 1, 2002, which, I might add, we have done. Michigan's plan does not require customers to leave bundled service from the incumbent provider but recognizes the need to unbundle distribution services so as not to tilt the playing field in favor of either the incumbent or the alternative electric supplier. Competitive fairness demands this. For the most part, all end users must have transmission access at the same rates, terms, and conditions afforded to bundled customers, all other things being equal. However, we have seen that all other things are not always equal.

For example, Michigan has at least one transmission owner who filed an open access tariff that would grandfather lower rates to existing customers of its affiliate and increase the

rates of new retail direct access customers by over 70%. Supposedly, this arrangement "protects native load." It also created an advantage to the incumbent which is not acceptable at the retail or wholesale level if we are to see competitive markets develop. Besides, as noted by the FERC staff, ". . . all load is somebody's native load." Needless to say, when we see proposals that conflict with our state goals, we'll let you know. In my opinion, it is our responsibility to point out the areas of conflict that prevent us from developing a competitive market at the state level. Hopefully, it is your responsibility to continue to listen.

As I noted earlier, in order to successfully implement our retail choice program, there may be rates, terms, and conditions that should not be the same at the wholesale and retail level. Energy imbalance charges come to mind. Where individual retail loads are less predictable than wholesale loads, there is a valid argument that the threshold for imbalance charges should be broader for retail service than wholesale service. Some have argued that these excessive imbalance charges, triggered by too narrow a range, will discourage customers from taking retail choice service. As we move forward, it is likely that we will discover other terms or conditions that should be adjusted to accommodate retail choice programs. But what is the best way to get your attention? In the past, we could require the in-state transmission provider to request a waiver or tariff change at the FERC. This, however, takes time and time is not an ally of the competitor. In this case, regulatory delay discourages the development of the retail electricity market we are striving for.

Michigan's legislature decided that our residents deserve the benefits of competition and customer choice. They could have decided, as other legislatures have, to stick to traditional bundled utility service and avoid this "brave new world" of retail competition. If they had, the question of whether wholesale and retail rates, terms, and conditions for transmission service

should be the same would be largely academic. States implementing retail customer choice programs, however, will be increasingly sensitive to federal transmission decisions that could impact their programs. The ability of states to act locally and provide feedback to the FERC will be increasingly beneficial.

How do we make the dual jurisdiction model work? I believe state commissions are still the best monitors of service at the interface with the end user. Whether a state adopts a choice program or not, state commissions are much closer to the customer and will continue to be the "eyes and ears" that you will need to assess the efficacy of your national and regional policy decisions. Furthermore, as we move to a single transmission tariff approach, states must be afforded special deference by the FERC with or without an intervening RTO. This unique status is based on individual state statutory authority which, in Michigan, requires us "to ensure that all persons in this state are afforded safe, reliable electric power at a reasonable rate." In regions served by an RTO, transition to a single transmission tariff approach should be the goal, with significant guidance from state commissions. If an RTO moves forward with a proposal without state support, that proposal should be subjected to intense scrutiny.

Many of the concerns regarding native load and firm transmission service will be alleviated by well-functioning RTOs. RTOs should make no distinction as to whether the load is served as bundled service or as direct retail access service. Firm transmission service should be provided to both under the same rates, terms, and conditions. As I stated earlier, Michigan's customer choice program allows both direct access and bundled service. In most cases, a single tariff federal model should have little if any impact on our regulatory responsibility, as long as there is no unfair discrimination based on the type of load served. We must be vigilant at the state and federal level to detect and disarm rates, terms, and conditions that "tilt the table" one

way or another.

Planning for new transmission investment should be the responsibility of the RTO through its FERC approved governance process. States must be fully engaged in this process and accorded deference that recognizes their statutory responsibility. Subsequent prudence reviews of transmission investment is ultimately a FERC responsibility. However, I would suggest that an enhanced process modeled on Section 271 of the Federal Telecommunications Act which requires the Federal Communications Commission (FCC) to consult with states prior to allowing a Regional Bell Operating Company (RBOC) into the InterLATA long distance market. This approach might offer an opportunity for the affected state commission to perform an initial prudence review and advise the FERC of its findings. Where a project is interstate in nature, a Section 209(a) joint board approach could also be considered. We anticipate additional concerns may still require this more formal arrangement and continue to encourage you to consider the formation of joint boards. Specific joint boards might be established related to interstate transmission siting as well as other specific retail competition issues.

The success of any model of cooperation and coordination adopted depends in large part on the deference the ultimate decision maker gives to the advice forthcoming from the process. To date, we are pleased with the deference this Commission has shown to the Midwest states and hope it continues. As I stated last October, we promise to continue to work together to nurture a highly reliable and vibrantly competitive regional market. A single transmission tariff model will help us along this path. This, I believe will benefit customers in states that have embraced retail customer choice as well as those that have not.

Thank you for this opportunity.